

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7742 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

VIKRAMBHAI KALUBHAI RATHWA

Versus

DISTRICT MAGISTRATE

Appearance:

MS DR KACHHAVAH for Petitioner No. 1
MR KAMLESH KACHHAVAH for Petitioner No. 1
MS MITA PANCHAL, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 24/09/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 24.4.2003

passed by the District Magistrate, Bharuch, against him, in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "bootlegger" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 24.4.2003.

2. The grounds served upon the petitioner and placed on record reveal that the detaining authority placed reliance on the fact of registration of the crimes against the petitioner on 10.10.2002 and 23.2.2003 under Sections 65(e), 66(b) and 116(1)(b) of the Bombay Prohibition Act. The detaining authority also took into consideration in-camera statements of two witnesses recorded on 29.3.2003 by the proposing authority and verified by the detaining authority on 1.4.2003. This in-camera statements reveal unreported incidents occurred on 27.2.2003, 10.3.2003 and 29.3.2003. From the above material, the order impugned in this Special Civil Application came to be passed by the detaining authority against the petitioner on 21.4.2003.

3. Learned Advocate Ms. DR Kachhawah for the petitioner and learned AGP Ms.Mita Panchal for the respondents were heard at length.

4. Out of various contentions raised on behalf of the petitioner, and controverted by the AGP, it clearly appears from the rival contentions that the matter can be disposed of on the ground whether there was delay in passing the order impugned in this Special Civil Application. The chronology of the grounds discloses the illegal activities of the petitioner on 10.7.2002, 23.2.2003, 27.2.2003, 10.3.2003 and 21.3.2003. So far as the last three dates are concerned, they are the incidents unreported to the police and came to the knowledge of the sponsoring authority on 29.3.2003. Therefore, if we consider from the date of last offence registered against the petitioner i.e. on 23.2.2002, the order passed on 21.4.2003 is an order passed with delay. The last unreported incident is also of 21.3.2003, the order of detention is passed a month thereafter i.e. on 21.4.2003. Therefore, there is a clear delay in passing of the detention order. This delay is fatal for the further detention of the petitioner. In this view of the matter, the order impugned in this Special Civil Application is required to be set aside on this ground of delay.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the District Magistrate, Bharuch, on 21.4.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty if he is not required to be detained in jail for any other purpose. Rule made absolute.

(J.R. Vora, J.)

p.n.nair